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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DAVID ERIC ANDERSON, Defendant and Appellant.	G030335 (Super. Ct. No. 01NF0299) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert R. Fitzgerald, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to Cal. Const., art. VI, § 6.) Affirmed.

Ronald Carpol for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Sara Gros-Cloren and Carl H. Horst, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant David Eric Anderson claims numerous errors led to his conviction for three counts of drug-related charges. Because these claims are without merit, we affirm the judgment.

I

FACTS

On January 9, 2001, around midnight, officers Pat Carney and Michael Riley of the Buena Park Police Department went to the Airport Inn in Buena Park. The manager directed them to a specific room. Outside the door, they heard considerable noise, including loud talking and laughing. Carney knocked on the door, and when it was opened, he detected the strong smell of marijuana. The door was opened by Sean Kelly, who gave the officers permission to enter.

Five people were in the room, including the defendant, Kelly, Chris Iovino, Josh Brown, and a minor, Joshua Y. A yellow backpack was on the floor, next to where the defendant was seated. A search of the backpack revealed plastic sandwich-size bags, an electronic scale, a large white envelope with over 100 smaller plastic bags, a small glass bottle, several 100-gram weights, a cigarette rolling device, rolling papers, a glass bottle with a cork top, a clear plastic cylinder with a plastic lid, and a disposable lighter. The backpack also contained two chunks of marijuana which weighed about one-half of one gram, four bags of marijuana (three of which weighed 8.4 grams, the fourth weighed 15.2 grams), and a jar containing 3.675 grams of a liquid. (The parties stipulated the substances found were marijuana and LSD.)

Searches of the room's other occupants also revealed drugs and drug paraphernalia. Following the searches, the room's occupants were arrested. Carney

testified he informed the defendant of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (hereafter *Miranda*) prior to speaking with him. Carney then asked the defendant about drug use, and testified the defendant admitted using methamphetamine for more than a year, and that he had last used it six hours earlier. Although he initially denied owning the backpack, he later admitted it belonged to him. He further admitted he sold drugs, and that he had sold marijuana to Iovino that day. Carney further testified that based on the defendant's physical appearance, he believed the defendant was under the influence of methamphetamine when Carney spoke to him. A blood test later confirmed the presence of methamphetamine.

The defendant was charged with possession for sale of LSD (Health & Saf. Code, § 11378), possession for sale of marijuana (Health & Saf. Code, § 11359) and unlawful use of methamphetamine (Health & Saf. Code, § 11550, subd. (a)).

Based on the quantity of drugs found, and the presence of the scale and packaging material, Carney at trial testified he believed the drugs found in the backpack were for purposes of sale. Riley similarly testified that many of the items found in the backpack were used in the sale of marijuana. He further testified that based on his training and experience, he believed the marijuana and the LSD were for purposes of sale.

The defendant testified on his own behalf. He stated that although he used drugs, he did not sell them, and the police officer's testimony about what he had said that night was false. He said the backpack was in the room with Kelly when he arrived. He further testified that he was "stoned" on marijuana when he was taken into custody. When advised of his *Miranda* rights, he told the police he wanted a lawyer. He further

testified that Carney swore at him and threatened him if he did not confess. He denied ever selling drugs.

On rebuttal, Carney stated he did not threaten the defendant, nor did the defendant ever say he wanted a lawyer.

A jury found the defendant guilty on all counts, and he was sentenced to three years, eight months in state prison.

II

DISCUSSION

The defendant's retained counsel has done such a cursory job of briefing this case (indeed, the brief is in outline form) that the defendant's arguments are incomplete and poorly developed, and therefore difficult to follow. We have nonetheless done our best to understand the arguments he is attempting to put forth.

Advisement of Miranda rights

The defendant argues, "The trial court admitted incriminating statements of defenant/appellant [*sic*] after improper *Miranda* warning was given defendant/appellant." The defendant then cites *Davis v. United States* (1994) 512 U.S. 452, in support of the proposition that courts are required to determine whether the accused actually invoked their right to counsel. Thus, it seems the issue is not whether the *Miranda* warning was properly given, but whether the defendant actually invoked his right to counsel.

The Attorney General correctly argues that unless this issue was asserted at trial, it is waived on appeal. (*People v. Milner* (1988) 45 Cal.3d 227, 236.) The defendant fails to cite to any objection at trial, and the Attorney General asserts such an

objection was never made. Instead of seeking to exclude his admissions, the defendant disputed that he had ever made such admissions. Thus, because this objection was not raised at trial, we need not consider it further.

Even if we were to consider this issue, the defendant would not prevail. The exchange the defendant cites as his request for a lawyer occurred during the *Miranda* admonishment. Carney testified he told the defendant each of the first three rights and then asked "Do you understand?" and the defendant answered "yes" each time. Carney then testified he told the defendant: "If you cannot afford an attorney, one will be appointed to you free of charge before questioning, if you want. And again, he stated yes." From the context of the exchange, a reasonable finder of fact could decide that the defendant was merely stating he understood his right to a lawyer, rather than an invocation of the right. Carney testified the defendant never said he wanted a lawyer, and the court was entitled to decide Carney was more credible than the defendant. When there is substantial evidence to support the finder of fact's determination, as there is here, no basis for reversal of the judgment exists. (See, e.g., *People v. Bradford* (1997) 14 Cal.4th 1005, 1032.)

Intelligent waiver of Miranda rights

The defendant next argues the court improperly admitted the defendant's confession, because the defendant could not knowingly and intelligently waive his *Miranda* rights due to his intoxicated state. This argument, like the defendant's other *Miranda* claim, was apparently not raised at trial. In order to preserve the issue for appeal, an objection is required. (*People v. Jackson* (1989) 49 Cal.3d 1170, 1188.)

This argument is without merit in any event. The defendant's contention that his voluntary drug use invalidated any *Miranda* waiver is not supported by the law or by the record. Mere alcohol or drug consumption does not establish a lack of capacity to waive *Miranda* rights. (*People v. Jackson, supra,* 49 Cal.3d at p. 1189.) The record demonstrates that after the defendant was read a *Miranda* admonishment, he stated he understood each of the rights the officer had read to him. Despite the defendant's statement that he was "stoned," he did not testify that he did not understand the *Miranda* warnings. To the contrary, he testified that he told the officers he wanted a lawyer. Thus, there is nothing in the record to suggest the defendant was too incapacitated to knowingly and intelligently waive his *Miranda* rights.

Expert witness qualification

Next, the defendant argues the trial court erroneously allowed Carney to testify as an expert. He argues that Carney had never been previously qualified as an expert, and that the prosecutor did not attempt to qualify Carney as an expert.

A person is qualified to testify as an expert if he possesses "special knowledge, skill, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).) Carney testified that he had earned an associate degree in criminal justice, had graduated from the police academy, and had worked as a police officer for more than three years. Carney testified his college studies included 20 hours of coursework addressing drugs; he had also taken 40 hours of narcotics training at the police academy, and 20 hours of training while assigned to the narcotics bureau. He had also taken a 10-hour under the influence course. He further testified that as part of his job he had contact with 250 to 300 drug dealers and

users, and he had received formal training about the methods and habits of drug dealers and users.

A trial court's determination regarding the qualifications of an expert witness will not be overturned on appeal absent a manifest abuse of discretion. (*People v. Kelly* (1976) 17 Cal.3d 24, 39.) Such an abuse of discretion exists when the evidence shows that the witness "*clearly lacks* qualifications" as an expert. (*People v. Chavez* (1985) 39 Cal.3d 823, 828.) That is not the case here; Carney's training and experience were sufficient to permit him to state an expert opinion on whether the circumstances indicated the drugs in the defendant's possession were for sale rather than personal use. Thus, the court did not abuse its discretion by admitting Carney's testimony as an expert opinion.

Prosecutorial misconduct

The defendant's final argument is that prejudicial error resulted from the prosecutor's closing argument. The prosecutor argued the defendant had provided drugs to a 15-year-old boy, and the defendant claims this was unsupported by the evidence. The prosecutor also stated the police officers were honest and "we do things the right way," thereby, according to the defendant, vouching for the credibility of the prosecution's witnesses.

No objection, however, was raised at trial to any of the arguments the defendant now claims were improper. Unless a defendant makes a timely objection at trial and requests the jury be admonished, prosecutorial misconduct cannot be raised on appeal. (*People v. Ochoa* (1998) 19 Cal.4th 353, 428.) Therefore, we need not address this issue further. Were we to do so, we would conclude that any purported error was

harmless, because it was not reasonably probable the defendant would have been acquitted but for the error, given the enormity of the evidence against him. (*People* v. *Watson* (1956) 46 Cal.2d 818, 836.) The defendant's argument is therefore without merit.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.